IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO.366 OF 1998

1. Balkrishna Hanumant Chinchane, age 60 yrs. Occ: Service.

2. Sou Dhondabai Balkrishna Chinchane both residing at Parmarnagar Zopadpatti, S.No.16, Shule Vasti, Near Bhairoba Nala, Wanawadi, Pune. ...Appellants.

V/s

1. The State of Maharashtra

2. Tanabai Gnyanaba Sonawane R/o. Padmavati Zopadpatti, Sahakar Nagar, Pune - 411009. ...Respondents.

Mr. Nitin Jamdar for the appellants.

Mr. A.S. Shitole, APP for the respondent No.1 - State.

CORAM: V.G. PALSHIKAR &
R.C. CHAVAN, JJ.

DATE: 26th July, 2005

ORAL JUDGMENT: (Per. R.C. Chavan, J.)

1. Bizarre story of son-in-law being done to death by parents-in-law is unfolded in this appeal.

2. Deceased Kumar was married to the appellants' daughter Sangeeta. Sangeeta had gone to her parents' house and, therefore, Kumar too had followed her to bring her back. He stayed with parents-in-law and had a small quarrel about taking his wife with him. A

round of abusing followed. Appellant No.2 - victim's mother-in-law asked the victim to pour kerosene on his person and handed over Can to him. After he had doused himself with kerosene, appellant No.1 poured remaining kerosene from the Can on the person of son-in-law. They, then told the victim to touch their feet. As he bent to touch their feet, one of the two struck a match stick and set the victim on fire.

3. Victim sustained burn injuries. Neighbours gathered and extinguished the fire. The victim was taken to Sasoon Hospital by his wife and her cousin. On a report, police registered an offence and caused statement of victim to be recorded by the Special Judicial Magistrate. The victim succumbed to his injuries on the next day. After performing inquest, his body was sent for post-mortem examination which revealed that the victim died of 88% burns. Police performed panchnama of spot, recorded statements of witnesses and, on completion of investigation, arrested and chargesheeted the appellants.

4. The learned Judicial Magistrate, First Class, Cantonment Court Pune, who received charge-sheet, committed the case to the Court of Sessions. The learned Additional Sessions Judge, Pune to whom the case was assigned, framed charge of the offence

punishable under section 302 read with section 34 of the Penal Code against both the accused. They pleaded not guilty and hence were put on trial.

5. Prosecution examined in all five witnesses in its attempt to bring home the guilt of the accused. The defence examined two witnesses. After considering the evidence tendered, in light of arguments advanced before him, the learned Additional Sessions Judge convicted both the appellants of murder and sentenced them to suffer imprisonment for life and fine of Rs 15,000/- each under section 302 read with section 34 of the Penal Code. Aggrieved thereby the appellants have filed this appeal.

6. We have heard both, the learned Counsel for the appellants and the learned Additional Public Prosecutor for the State. The learned Counsel for the appellants submitted that there are no eye witnesses in this case and the case rests solely on the account of the incident given by the victim. He submitted that the victim's account is inherently improbable and contrary to the normal course of human conduct. Therefore, relying on decision of the Supreme Court in the case of Hardeep Vs. State of Haryana, reported in **(2002) 7 SCC 11**, the learned Counsel wanted us to upset the findings recorded by the learned Additional

Sessions Judge. Drawing our attention to the decision of the Apex Court in the case of State of Maharashtra Vs. Sanjay reported in **2005 SCC (Criminal) 231**, the learned counsel urged that if the dying declaration does not inspire full confidence of its truthfulness or correctness, it ought to be rejected and stated that the dying declarations in this case were of that genre.

7. We have gone through both the decisions on which the learned Counsel for the appellants placed reliance. There can be no doubt that while appreciating the evidence, including that of dying declaration, the Court should consider the normal course of human conduct and probabilities. Likewise, the proposition that the dying declaration must inspire full confidence of its truthfulness and correctness is unexceptionable Bearing in mind these principles, we would proceed to examine the evidence as regards the dying declarations.

8. P.W. 1 - Tanabai is victim's mother. She stated that on being informed of burn injuries sustained by her son, she rushed to the Sasoon Hospital and asked her son as to what happened. The victim told his mother that his parents-in-law had set him on fire after pouring kerosene on his person. The learned

Counsel for the appellants submitted that this version of P.W. 1 - Tanabai may be discarded because, in cross-examination, she stated when she asked her son as to what happened, her son reported that the cause of incident is not such as could be told. The learned Counsel submitted that this sentence washes off the value of Tanabai's version in examination-in-chief. To us, this does not appear to be so. What the victim refused to convey is the cause of the incident and not the "manner" in which the incident occurred. It may be seen that in the cross-examination itself Tanabai had denied the suggestion that her son did not tell her that the accused persons had set him on fire after pouring kerosene on him.

9. P.W. 2 - Dr. Sanjivkumar Jadhav was working as resident doctor in burn ward in Sasoon Hospital, on 29/10/1995. He stated that, at about 9.15 a.m., Kumar was admitted in the hospital. Dr. Jadhav inquired with the patient about the incident and Kumar gave a detailed account of the homicidal attempt by Kumar's parents-in-law by pouring kerosene on Kumar and burning him. It may be seen that the victim's wife was one who had carried the victim to the hospital. Victim's mother was yet to reach the hospital. Dr. Jadhav (P.W.2) is an independent person who had an occasion to listen to the victim before even

appellants arrived at the hospial. The victim gave a clear account indicating involvement of both the appellants in the ghastly act of setting him on fire. The learned Counsel for the appellants submitted that Dr Jadhav admitted in his cross-examination that his version in the examination-in-chief, that victim's parents-in-law were in one room, was not conveyed by the victim to him upon admission, but was heard by him when dying declaration was recorded by the Magistrate in his presence. This does not, in our opinion, reduce the value of communication received by Dr. Jadhav (P.W.2) and conveyed to the Court.

10. The police had requested the Special Judicial Magistrate Shri Khomane to record the dying declaration of the victim. Shri Khomane was examined as P.W.3. P.W. 2 - Dr. Jadhav states that the Special Judicial Magistrate recorded the statement of the victim when the patient was fully conscious and well oriented and, accordingly, he made an endorsement under his signature on the statement recorded by the Magistrate at Exhibit-18. P.W. 3 - Khomane, Special Executive Magistrate, proved the contents of Exhibit-18. In this statement, the victim had categorically stated that there was a quarrel between him and his in-laws. He tendered an apology whereupon, they held a kerosene Can and asked him to

pour kerosene on his person. He, therefore, doused himself with kerosene. Accused No.1 also poured kerosene on his person. Both the accused then asked him to touch their feet and when he bent to touch their feet, one of them struck a match stick and set him on fire. The entire evidence of the Special Judicial Magistrate Shri Khomane shows that the statement was recorded after taking necessary care. There is absolutely no reason for Shri Khomane to make a false record. The statement recorded by Shri Khomane is in tune with the account of the incident given by the victim to victim's mother and Dr. Jadhav (P.W.2). In view of this we have no doubt about the truthfulness and correctness of the dying declarations made by the victim.

11. The learned Counsel for the appellants submitted that the victim's wife was examined as D.W.1 and a neighbour was examined as D.W.2. Both these witnesses had, obviously, reached the scene after hearing cries. Therefore, they cannot throw any light on the manner in which the incident took place. P.W. 1 - Sangeeta states that when she was taking her husband to Sasoon Hospital, she asked her husband as to why he had done this act, when her husband reportedly told her that he did not like to leave her and that she should excuse him. It may be seen that Sangeeta had not asked the

victim as to how the incident occurred. She had presumed that the victim had set himself on fire as was told by her parents. In cross-examination, Sangeeta admitted that her parents have two houses which are about 10 paces away from each other. She stated that she was in one house, whereas her husband and parents were in other house. The evidence of D.W.2 - Arjun is equally useless to erase the effect of multiple consistent dying declarations given by the victim to his Mother Tanabai (P.W.1), Dr Shri Jadhav (P.W.2) and the Special Judicial Magistrate Shri Khomane (P.W.3). Therefore, even after giving more than equal treatment to the defence witnesses, as suggested by the learned Counsel for the appellants, relying on a decision of the Supreme Court in the case of State of Harryana Vs. Ram Singh, reported in **(2002) 2 SCC 426**, we have to infer that the evidence of these witnesses does not throw any different light on the manner in which the incident occurred.

12. The learned Counsel for the appellants urged that none of the dying declarations spell out as to which of the two appellants had struck a match stick. Therefore, according to the learned Counsel, it would be wrong to convict and sentence both the appellants without attributing to them the requisite guilty intention. The learned Additional Public Prosecutor

countered by submitting that it was improper to expect from the victim to state as to which of the appellants had struck a match stick when the victim had bent to touch their feet. He submitted that both the appellants are liable because even if one of them had struck the match stick, the other could have prevented the match stick being thrown at the victim unless the other shared the guilty intention. The throwing of a match stick on the victim and his suffering 88% burns is therefore indicative of sharing common intention by both the appellants.

13. In an era where bride burning is a rule, burning son-in-law would, indeed, appear abnormal, but it is not some thing against the normal course of human conduct and probabilities. One has to look at the facts unfolded from the point of probabilities of human conduct and not statistical possibilities of sons-in-law being set on fire as contrasted with daughters-in-law being burnt. Therefore, merely because burning a son-in-law is rare, it does not become improbable. The version given by the victim is consistent. There is no reason for him to make such a statement if the incident had not occurred and, therefore, we see nothing wrong on the part of the learned Additional Sessions Judge to have accepted this evidence.

14. However, we would differ with the learned Additional Sessions Judge on the legal consequences flowing from the established facts. As contended by the learned Counsel for the appellants, the case may fall, not under section 302 of the Penal Code, but under second part of section 304. The learned Counsel for the appellants submitted that the victim had doused himself with the kerosene, albeit at the instance of his parents-in-law. Yet, in doing so, the victim had taken the risk of death on his own. Had the victim not doused himself with the kerosene, he would not have been burnt. Therefore, according to the learned Counsel, the case would fall under exception (5) to section 300 of the Penal Code. Accepting this contention of the learned Counsel for the appellants, we hold that the appellants' conviction ought to be converted from one under section 302 read with section 34 of the Penal Code to one under section 304(II) of the Penal Code.

15. Accordingly, the appeal is partly allowed. The conviction of the appellants and the sentence for the offence punishable under section 302 read with section 34 of the Penal Code is set aside. Instead, appellants are convicted of the offence punishable under section 304(II) of the Penal Code and sentenced

to suffer rigorous imprisonment for 10 years each. The appellants shall surrender to their bail within a month before the learned Additional Sessions Judge who shall then take steps to have the appellants committed to prison to serve their sentence. Needless to say that the appellants shall be entitled to set off for the period of detention in the custody either before or after their conviction.

(V.G. PALSHIKAR, J.)

(R.C. CHAVAN, J.)